



07-21-03

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On: July 19, 2003
By: Jack Jmaev

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Jack Jmaev

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Lynch **Docket No.:** LNYM-002
Serial No. : 09/490,903 **Art Unit:** 2831
Filed: Jan 25, 2000 **Examiner:** Ngyuen, C.

Claims Priority To:

Claimed Priority Date:

Title: Bird Guard

July 19, 2003

Assistant Commissioner for Patent
PO Box 2327
Arlington, VA 22202

TECHNOLOGY CENTER 2800

JUL 23 2003

RECEIVED

PETITION

Applicant hereby petitions the Commissioner for a one-month extension for response to the Office Action mailed on March 21, 2003. Included herewith is the requisite petition fee of \$55.00.

07/22/2003 AHONDAF1 00000016 09490903

01 FC:2251

55.00 OP

RESPONSE

- 5 This paper is responsive to the Office Action mailed on March 21, 2003 and identified as Paper No. 12.

Applicant respectfully requests the Examiner to consider Applicant's comments presented in this response and to enter this response into the formal record of
10 the instant case. Applicant proffers this response on the basis that this response places the application in a position for allowance.

REMARKS

- 15 1. Applicant acknowledges the Examiner's Interview Summary dated April 22, 2003 that purports to summarize the substance of an interview that took place on April 3, 2003. If the record were to only include the single statement proffered by this interview summary, Applicant would be exceedingly harmed. The actual substance of the interview revolved around the terms of art. The
20 Examiner and his Supervisor steadfastly maintained that the term notch was used to refer to a longitudinal gap in a physical member, such as depicted in figures presented by Tipsord et al. (US Patent No. 2,871,282). Applicant avers that the term "notch" is used as a transverse cutout in a cylindrical member. Such a "notch" is one feature of the Applicant's claimed invention
25 and Applicant avers that no such notch has been found, or even suggested in the art of record.

Applicant further notes that Tipsord '282 does not disclose a notch as Applicant now claims as his own invention. During the interview, the
30 Examiner maintained the position that Tipsord '282 discloses, purportedly as shows in Fig 1 and 4, a notch. Tipsord neither identifies nor marks (see office

action 102 rejection regarding Claim 1) this feature in his teachings.

Applicant continues to object to this Examiners interpretation of Tipsord and his belief that Tipsord discloses a notch. As can be seen in Tipsord's Fig. 8, the so-called notch is really not a notch at all. In fact, Fig. 1 and 4 clearly

5 identify a bottom opening to the cylindrical member of Tipsord (Ref 94) and the so-called notch is only a drawing artifact in that an "attaching flange" (Ref 26 in Fig 4, and see Col 2:Line 50) protrudes down from one side of the opening *and merely appears to be* a notch. There is no notch according to Tipsord, only an attachment flange, that when viewed from the profile of Figs.

10 1 and 4, *appears to be* a notch. The true nature of Tipsord's invention is better illustrated in Fig. 8, a perspective view that shows the flange (Ref 26) as a protrusion from the normal profile of a portion of a cylindrical member.

2. Applicant notes that the Examiner found allowable subject matter in Claim 5, as admitted in Paper 10, specifically noting the novelty of a notch for

15 accommodating an insulator.

3. Claim 1, twice amended, has now rejected under 35 U.S.C. 102 (b) as being anticipated Tipsord '282. With respect to the foregoing discussions and

20 Tipsord's lack of a notch to accommodate an insulator, Applicant submits that Claim 1 is fully distinguished from the art of record and that the rejection of Claim 1 under 35 U.S.C. 102(b) should be withdrawn. Applicant does not admit that Tipsord discloses a notch, but even if the one attachment flange could be construed as forming a notch, any notch disclosed by Tipsord is not

25 akin to the Applicant's invention. The Applicant claims a notch for *accommodating an insulator*. Tipsord's attachment flange protrudes downward from a partial cylindrical member that comprises an opening best illustrated by Fig. 6 that shows the flattened base of the cylindrical member (noting the flange 26 that protrudes downward and again noting the lack of a

30 notch).

Applicant notes that the actual housing disclosed by Tipsord '282 fully envelopes the dielectric insulator that the Claimed invention avoids by means of the "notch for accommodating an insulator". Referring to Tipsord '282, Ref 57 is identified by Tipsord as an insulator pin (Col 4:Line 45). The insulator pin 57 provides mechanical support for the actual dielectric insulator (the trapezoidal shape in hatched lines). Note that the actual dielectric insulator is, as already stated, not avoided by any purported notch and is enclosed by the cylindrical member. Hence, Tipsord does not disclose a notch for avoiding an insulator. Any notch purportedly disclosed by Tipsord avoids only the insulator pin. This is in sharp contrast to the claimed invention, as depicted in Applicant's Fig. 1 where both the insulator pin and the insulator 3 are avoided by the notch.

4. Claim 4 has been rejected under 35 USC § 103(a), obviousness. The Office Action has based the rejection of Claim 4 on Stirn (US 3,251,161) in further view of Tipsord '282. Applicant notes that Claim 1 has been distinguished from the art of record and that Claim 4, being dependent on Claim 1, cannot be held obvious in light of Applicant's showing that Claim 1 is non-obvious (*re Fine, 837, F.2d 1071, 5 USPQ2d 1596, Fed. Cir. 1988*).

To support rejection of any claim under 35 USC § 103(a), the references cited in support of the rejection must satisfy the following criteria:

1. There must be some motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings;
2. There must be a reasonable expectation of success; and
3. The prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicant respectfully submits that the cited references do not offer any motivation to modify the references to make the claimed invention. Applicant

also respectfully submits that the knowledge available to one of ordinary skill in the art would not have motivated the artisan to modify or combine the cited references to make the claimed invention. Further, the cited references do not teach or suggest all claim limitations of the claimed invention.

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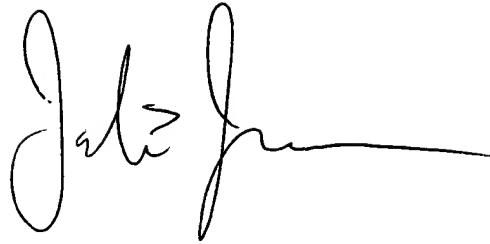
Applicant avers that Tipsord does not teach a notch for *avoiding an insulator*. Hence, the first part of the *prima facie* case for obviousness is not satisfied and the rejection of Claim 4 must be withdrawn.

10 5. Based on the foregoing, Applicant considers the present invention to be distinguished from the art of record. Accordingly, Applicant earnestly solicits the Examiner's withdrawal of the rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States
15 patent.

6. Applicant believes that this application has not been allowed to issue as a United States Patent because of the Examiners perception that Claim 1 is "too broad". This, truly, is discouraging. Where an applicant discovers or
20 develops a useful invention that is novel and non-obvious, the Examiner is obligated to allow the application to issue, even if a claim is perceived as "too broad". Here, Applicant has discovered that avoidance of an insulator in order to preserve its dielectric qualities is useful when shielding power lines from inadvertent contact with life forms. This feature, i.e. the notch for
25 accommodating an insulator, has not been described in any reference proffered by the Examiner. And, the Examiner's attempt to distort Tipsord '282, is merely an attempt to force the Applicant to narrow the scope of the claims Applicant is rightfully entitled to. Applicant prays that the Examiner allows this application to issue as a United States Patent, not because the
30 claim is too broad, but because the features of the claimed invention have not been discovered antecedent to the Applicant's discovery and the claims, as amended, are fully distinguished from the art of record.

Respectfully Submitted,

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07-21-03

MAC 2831

PTO/SB/17 (10-02)
Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)**55.00**

Complete if Known

Application Number 09/490,903

Filing Date Jan 25, 2000

First Named Inventor Lynch

Examiner Name Nino, A.

Art Unit 2831

Attorney Docket No. LYNM-002

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number
Deposit Account Name

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments

☐ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 370	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 510	2003 255	Plant filing fee	
1004 740	2004 370	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =	X	=
Independent Claims	-3** =	X	=
Multiple Dependent			

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description
1051 130	2051 65	Surcharge - late filing fee or oath
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet
1053 130	1053 130	Non-English specification
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action
1251 110	2251 55	Extension for reply within first month
1252 400	2252 200	Extension for reply within second month
1253 920	2253 460	Extension for reply within third month
1254 1,440	2254 720	Extension for reply within fourth month
1255 1,960	2255 980	Extension for reply within fifth month
1401 320	2401 160	Notice of Appeal
1402 320	2402 160	Filing a brief in support of an appeal
1403 280	2403 140	Request for oral hearing
1451 1,510	1451 1,510	Petition to institute a public use proceeding
1452 110	2452 55	Petition to revive - unavoidable
1453 1,280	2453 640	Petition to revive - unintentional
1501 1,280	2501 640	Utility issue fee (or reissue)
1502 460	2502 230	Design issue fee
1503 620	2503 310	Plant issue fee
1460 130	1460 130	Petitions to the Commissioner
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)
1806 180	1806 180	Submission of Information Disclosure Stmt
8021 40	8021 40	Recording each patent assignment per property (times number of properties)
1809 740	2809 370	Filing a submission after final rejection (37 CFR 1.129(a))
1810 740	2810 370	For each additional invention to be examined (37 CFR 1.129(b))
1801 740	2801 370	Request for Continued Examination (RCE)
1802 900	1802 900	Request for expedited examination of a design application

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)**55.00**

SUBMITTED BY

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(Complete if applicable)

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Signature

Date

7/18/03

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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